

TIMBER GRAFT WAS RAISED BY "GROSS EXTORTION;" AND FLEMMING IS GUILTY IN THE RAILROAD CASE

DRASTIC REPORT ON THE DUGAL CHARGES

Royal Commission Uses Strong Language in Both Timber Graft and Railway Matters

Flemming Guilty of Compelling Contractor Kennedy to Fork Over \$2,000, and He "Set Seal of His Approval" on Crown Land Blackmail Which Berry Extorted—Flemming "Not Guilty" of "Directing" Berry to Extort—Money "Diverted" in Connection With Valley Road Less Than Charged, But Many Irregularities—McLeod Not Guilty—Full Report of Sweeping Findings on Both Sets of Dugal Charges.

Friday, Nov. 20.

The report of the Royal Commission which investigated the Dugal charges was made public last evening by Governor Wood, and is published herewith. It is in two sections, the first dealing with the extortion of money from the holders of Crown Lands, and the second dealing with the charges in connection with the Valley Road.

Taken together these reports are absolutely crushing in nature. Their appearance must presage a revolution in the affairs of New Brunswick, for an examination of both documents proves that they are the most important ever placed on the public records of this Province.

Briefly the Royal Commission finds, in regard to the timber charges:

That the \$71,000 collected from the lumbermen after a conference between Flemming, Teed, and Berry, WAS SECURED BY EXTORTION.

The Commissioners say: "Having in view the testimony given by the different contributors, THE ONLY CONCLUSION THAT SEEMS POSSIBLE TO US IS THAT THE MONEY WAS ACTUALLY EXTORTED."

As to the nature of the transaction, the Royal Commissioners say: "It is difficult to imagine anything more reprehensible or blameworthy than that an official of the department interested should present such a demand. . . . To those dependent upon the renewal of their timber licenses it is not only an extortion of the most effective nature, but it appears the more harsh and cruel inasmuch as it is produced by one to whom it is unsafe to make protest and for a purpose repugnant to many of the contributors."

The Commission does not find evidence actually to prove that Flemming personally directed the extortion, but it says: "That Flemming named the treasurer of the fund, Teed of Woodstock."

That Flemming knew efforts were being made to get money from the holders of Crown timber licenses.

That Flemming knew from time to time that such moneys were coming into Teed's hands.

THAT FLEMMING "SET HIS SEAL OF APPROVAL ON THE TRANSACTION BY INTRODUCING HIS CHOSEN TREASURER TO MR. BRANKLEY WITH THE WORDS: 'ANYTHING MR. BERRY TELLS YOU ABOUT THIS MAN (TEED) WILL BE ALL RIGHT.'"

That it is fully proved that the money was in fact extorted by Berry, and that Flemming "WAS WELL AWARE THAT MONEYS WERE BEING COLLECTED FOR A PURPOSE UNQUESTIONABLY IMPROPER." This the Commissioners say is amply shown. Also the Commission says it is manifest that Flemming "directed the disposition of such money when collected, also that 'HE ACQUIESCED IN THE COLLECTION OF SUCH MONEYS AT A TIME AND FROM A SOURCE HIGHLY AND GRIEVOUSLY IMPROPER.'"

While the Commission says there is a great deal to support the view that Flemming could not possibly be in ignorance of Berry's activities and of the methods he employed, the Commission does not find such sufficiency of proof as would justify it in declaring that the personal direction of the extortion by Flemming was actually established.

Such is the gist of the report on the timber charges, which is given in extended form below.

THE RAILWAY CHARGES.

The charges of Mr. Dugal in connection with the Valley Railway were, in the main, two: that a large amount of money intended for the construction of the railway was diverted from its proper channel, and that contractors under the St. John & Quebec Railway Company were compelled to pay and did pay large sums to members of the local government in the year 1912.

The Royal Commission finds that some sums of money were diverted, and improperly charged, that many indefensible payments were made:

And that Flemming compelled Contractor Kennedy of Kennedy & McDonald to pay him \$2,000.

In regard to the \$2,000 which Flemming got from Contractor John Kennedy, the Commissioners say:

"We think and find that Hon. Mr. Flemming is guilty of this act of compulsion which has been charged against him."

The report says also, on this head:

"What might rightly be considered compulsion under one set of circumstances might by no means constitute or give rise to it under other circumstances, and therefore it is that while there was no threat or menace in the conversation (between Flemming and Kennedy) we have NO HESITATION IN CONCLUDING THAT THE COMPELSION UNDOUBTEDLY EXISTED, TAKING ITS RISE PRIMARILY FROM THE FACT THAT MR. FLEMMING WAS PREMIER OF THE PROVINCE AND MR. KENNEDY WAS A CONTRACTOR IN THE BUILDING OF THIS WORK IN QUESTION."

The matter of whether Mr. Kennedy was thinking of his second

contract in making the payment is dismissed by the commissioners as not necessary to prove compulsion. Rather, they state further:

"The compulsion, which accompanied the act, did not take its rise from any fear of disappointment with reference to a second contract, nor was the money given with a view of securing it, but it was caused by the very position held by Mr. Flemming and possibly also from an apprehension as to the contingency which might attach to the performance of the existing contract in case of refusal to pay."

In other words the Premier of New Brunswick "shook down" the contractor for \$2,000.

As Hon. H. F. McLeod swore one way and Scott and Kelly, the contractors, swore another way in regard to the payments to McLeod, the commissioners find that they cannot say, as against Mr. McLeod's denial that the charge has been proved, and therefore they find Mr. McLeod not guilty.

THE COMMISSION FINDS THAT \$100,000 OF THE \$350,000 BORROWED BY GOULD AND HIS ASSOCIATES, FROM THE PRUDENTIAL TRUST COMPANY DID NOT GO INTO THE RAILWAY AND MUST NOT BE CHARGED AGAINST THE BONDS. They refer to \$107,000 of other charges as improper.

It finds that the Prudential Trust Company did nothing improper in any way.

It finds that the ten per cent which the construction company was getting from the railway company was an improper transaction. It is found improper that one Gould company should make a profit out of another Gould company and that the profit should come out of the Province of New Brunswick.

Payments such as \$1,000 to the Fredericton Gleaner and \$3,000 to Winslow are stamped by the Commission as without justification or excuse. Many preliminary fees to solicitors are also condemned.

The Commission's views on "diversion" of funds are somewhat technical and required careful reading. While the Commission finds \$107,000—much less than Mr. Dugal alleged—not properly charged to construction, it does not support his principal charge of diversion.

Royal Commission's Report On the Timber Charges

The royal commission's report on the timber charges begins with a recital of the legislation appointing the commission and a reproduction of the charges made by Mr. Dugal.

These charges were that the Hon. James Kidd Flemming, through the agency of Wm. H. Berry, chief superintendent of scalers and under the direct control of Flemming, in the year 1912, did unlawfully extort from divers large lessees of crown timber limits within the province of New Brunswick a sum of \$71,000 from said timber limits over and above the amount of bonus paid by them respectively as set forth in the fifty-third annual report of the Crown Land Department for the year ending October 31, 1913, which said amounts were unlawfully extorted amounting in the whole to the sum of about \$100,000, no portion of which sum was accounted for or paid into the revenues of this province.

"And said moneys were extorted from said lessees and paid to the said Wm. H. Berry with the knowledge and consent and under the direction of the Hon. James Kidd Flemming while occupying the office of premier and minister of lands and mines, and said moneys were so paid before the lands were classified under the provisions of Chapter II of the Statutes of New Brunswick for the year 1912."

Then the commissioners recite that they were authorized to investigate these charges and report whether they found Flemming guilty of directing the extortion, and if the moneys were so extorted with Flemming's knowledge and consent and under his direction, and received by Berry, then, what disposition did Berry make of the funds and what was their ultimate destination.

THE PRELIMINARIES.

In order to clear the way for what follows the commissioners in their report produce from the statutes the Flemming Timber Act—"An act respecting the Crown Timber Lands of the Province." This act, with which the public is familiar, provided for the system of bonuses for those holders who desire to retain their lands, in the division of the crown lands into the various classes, beginning with the bonus of \$100 a square mile for class A and running down to \$20 a mile for class D.

Having recited this act of the legislature, the report proceeds to relate that Flemming became premier and surveyor-general in October, 1911. It relates the crown land policy from 1899 down to the present time, pointing out that the leases were to expire in 1912 and showing how this policy was altered by the Flemming Timber Act. The report then proceeds as follows:

"By the provisions of Section 3 of said act mentioned act, the lieutenant governor-in-council was to determine, prior to the first day of July, 1912, the amount of bonus to be paid by the said lessees per square mile for the privilege of getting timber upon the lands held by them, and it was considered that some examination should be made and information obtained for the purpose of classifying the crown land areas held by various lessees with a view of determining the amount of bonus that should be paid to the various holders thereof, and it appears that William H. Berry (who is the Berry mentioned in said charge) and who was at the time the Hon. Mr. Flemming became surveyor-general, and afterwards, an important official of the department, to wit, chief superintendent of scalers, was charged with the duty of making the examination and securing the information aforesaid, and it is in evidence that the said William H. Berry had called upon most, if not all, of the large holders of crown land areas, and received from them, as many testified, all the information they had in their power and other employees could give with reference to the location and general contents of the lands held by them, the character and quality of the timber on their respective areas, the extent of their production, the facilities for lumber operations upon said lands with reference to stream driving, and the prospects and possibilities for reforestation."

"The said William H. Berry afterwards made a report or statement to Hon. Mr. Flemming, minister of lands and mines, showing the holdings of the different lessees of crown lands, the nature of their holdings and the number of miles held by them, dividing their holdings into classes, A, B, C, and D. The statement so submitted gave the number of miles held by each lessee and the class in which each should be placed. Mr. Flemming states in his evidence that said statement was submitted, and after the discussion of the matter with his colleagues, an order-in-council was made on July 10, 1912, fixing the rate of bonuses as follows: \$100 for class A; \$75 for class B; \$50 for class C, and \$20 for class D."

The report then reproduces the order-in-council referred to which fixed the classification and specified that the bonus due on August 1, 1912, might be adjusted by the payment of one-half the amount in cash and the obligation of the licensee to pay the remaining one-half on or before August 1, 1914. The report then proceeds as follows:

FLEMMING SELECTS TEED.

"The Hon. Mr. Flemming is unable to give the date when the first intimation was made to him that the formation of a fund for party purposes was in contemplation, but evidently it was after Berry had conferred with the lessees of crown lands for information with reference to the classification of their lands as mentioned above, which would probably be some time in the latter part of May, 1912. He says that William H. Berry stated to him more than once that the lumbermen, meaning the lessees of crown lands, were desirous of making a contribution to the party's funds, that at first he took no notice of the suggestion but the second or third time it was mentioned by Berry he told him that he (Flemming) could have no connection with a matter of that kind, and that he (Berry) must have no connection with the getting of money for that purpose, because he (Berry) was an official of the department and that his usefulness would be gone if he had received money from the lumbermen, and, if contributions were made, E. R. Teed of Woodstock, would be a proper person to receive the funds in the interest of the party. Flemming said that he spoke to Teed about the matter, told him what Berry had said about the proposed contributions to a party fund from the lumbermen, asked him to take care of said fund, and Teed consented to do so. Mr. Flemming also says in this connection he did not know or have any hint, knowledge, or information that the contributions were to be other than absolutely voluntary."

"The evidence shows that some time in June, 1912, Berry visited the North Shore of the province, where a large number of lessees of Crown Land areas

resided, and asked the said lessees of Crown Lands to meet him at Newcastle, which they did in very considerable numbers, to talk over the general provisions of the last mentioned Act, and to make suggestions in regard to it, and to explain the provisions of the Act and how it was to be worked out. He also spoke about the bonus to be fixed in the said Act, and said he thought the maximum bonus would be somewhere in the vicinity of \$100 per square mile, but it was not settled."

HOW THE "BAG" WAS FILLED.

"It appears in evidence that within a few days after said meeting, and somewhere about the last part of June, 1912, Berry made a proposal to J. P. Burdell, Angus McLean, manager of the Bathurst Lumber Company, Walter Stevens, manager of the Dominion Pulp Company, Wm. B. Snowball, of the J. B. Snowball Co., Ltd., Allan Ritchie, Robert Sinclair, for the St. John's Lumber Company, James Robinson, N. M. Jones, manager of the Edward Partington Pulp & Paper Company, James A. Rundle, and Charles L. Fenderson, that it was desired to raise a campaign fund, and asked them to contribute a sum of money equal to \$15 per acre of their holdings of Crown Lands, in addition to the bonus to be paid by them."

"While some at first demurred, and some asked for time to consider the matter, the final result was that they paid up in cash, cheques or bank drafts, to J. W. Brankley, general manager of the Miramichi Lumber Company at Chatham, whom Berry had asked to act as treasurer of the fund for a time, and afterwards to pay it over to E. R. Teed, as follows:

J. P. Burdell	\$2,000.00
Bathurst Lumber Company	15,000.00
J. B. Snowball Co., Ltd.	7,200.00
Allan Ritchie	4,500.00
St. John's Lumber Co.	3,000.00
James Robinson on own account	2,167.50
James Robinson, on account, T. Lynch Estate	1,830.00
James A. Rundle	\$32.50

"These amounts were subsequently handed over by J. W. Brankley to Edgar R. Teed, who was designated by the Hon. Mr. Flemming to receive and take care of the said fund for party purposes. In addition to the said amounts there was received by the said Teed for the purpose of said party or campaign fund from Frederick C. Beatty, acting for Stetson Cutler Co., the sum of \$15,000, and from Nathaniel M. Jones, representing the Partington Pulp & Paper Co., the sum of \$3,250, both companies being at the time lessees of Crown Lands, and both these amounts were paid by the said companies over and above the bonuses paid by them under the said Act 3, George V, Chapter 2."

SOME OF BERRY'S PICKINGS.

"The evidence clearly shows that William H. Berry received the sum of \$4,500 from the Dominion Pulp Company through a bank draft sent by Walter C. Stevens, manager of said company, to John E. Moore, of St. John. Moore received the said draft and Berry got the money for same from the bank also from the Bathurst Lumber Company through Angus McLean, manager of said company in addition to the above amount of \$15,000, paid by them, the sum of \$5,000, from the London Lumber Company through Charles L. Fenderson, manager of said company, the sum of \$2,000, and from Stetson Cutler Co., through Frederick C. Beatty, the sum of \$15,000, in addition to the said amount of \$15,000 paid by them, all of which moneys the said Berry retained and still retains and has appropriated to his own personal use."

"EXTORTION" DEFINED.

"Now, as to the moneys so received by Berry as above set out, the first inquiry that suggests itself is: Were these moneys extorted by him? To understand and appreciate just what is involved in the terms 'extortion' and 'extorted' it is well to say that there is necessarily conveyed by these words the idea that the thing extorted is acquired under compulsion or extortion, as stated in the definition of extortion, given in 12 A. E. Encyclopedia of Law 2nd, Edition, 576, or by reason of the subjection of the giver to some necessity (Standard Dictionary) or is obtained by the party extorting it by virtue of his authority over the person parting with it (Century Dictionary). In Halsbury's Laws of England, Volume 9, page 665, under the head of Extortion by Threats the author says: 'They (the menaces) must be of such a nature as to unsettle the mind of the person to whom they are made and take away that element of free volition which long constitutes consent.'"

"In Canadian law it is an offence to do certain things enumerated within the code with intent to extort or obtain anything from any person. Doing such things constitutes the statutory offence of extortion. It is not, however, with the offence so defined by statute that we have here to deal. For the purpose of this enquiry, having regard to the definition above referred to, we consider that the money in question was obtained by extortion, if it were not given by free voluntary action on the part of the donors."

"To decide this question it becomes necessary to pass in review the conversations and negotiations, as well as to consider the circumstances under which such conversations and negotiations took place and the relationship of the parties affected thereby."

PUTTING IT UP TO THE LUMBERMEN.

"In the conversation with Mr. John P. Burdell in June, 1912, Berry explained that the bonus had not yet been settled, but he thought it would be in the vicinity of one hundred dollars a mile, and he said it was proposed the lumbermen should put up a fund of fifteen dollars a mile for election purposes. It must be borne in mind that at the time of the conversation above referred to the lands were not classified, neither was the amount of the bonus determined. Mr. Burdell paid his contribution on the 27th day of June, 1912, in the manner Berry suggested."

"To Mr. Stevens, manager of the Dominion Pulp Company, Mr. Berry said he couldn't answer his (Stevens') inquiry as to how much the bonus upon the pulp company's lands would be until he (Berry) had seen Mr. Brankley. Mr. Stevens further testified that after he had agreed through Mr. Brankley to put up fifteen dollars a mile for a campaign fund, and after informing Berry that he had agreed to Brankley's proposition, Mr. Berry informed him that the classification of the company's lands would be \$75 per mile. On the day following, 27th June, 1912, Mr. Stevens paid Mr. Brankley \$4,500 for the campaign fund."

"In the interview with Mr. W. B. Snowball in the latter part of June, 1912, after a discussion concerning the lands under license to J. B. Snowball Company, Berry said to Mr. Snowball: 'There is another thing I want to discuss with you. It is considered an opportunity to raise a fund—it is considered that all you lumbermen should pay \$15 a mile—all the others have agreed to it.' Mr. Snowball refused to pay until after discussing the proposal with others engaged in the business, and as a matter of fact did not pay until the 18th day of July, 1912, on which date he handed over his contribution of \$7,200 to Mr. Brankley, therein following Berry's instructions in that regard."

WOULD HAVE TO "GIVE UP."

"To Angus McLean, manager of the Bathurst Lumber Company, Mr. Berry said that the bonus on the last named company's lands would be \$100 a mile, in addition to that the company would have to put up \$15 a mile for an outside fund, which witness said he understood to be a campaign fund. The witness paid to the order of Mr. Brankley into the Bank of Montreal, Bathurst, fifteen thousand dollars between the first and third days of July, 1912, as the company's contribution to the fund."

"Mr. Allan Ritchie has testified that in a conversation between himself and Berry on or about the 20th day of June, 1912, after discussing the hundred dollars a mile bonus, in the same conversation Berry brought up the matter of the campaign fund of \$15 a mile. Mr. Ritchie paid the levy on three hundred miles, amounting to \$4,500, to Mr. Brankley on the following day."

"After telling Mr. Robert Sinclair that the bonus had been fixed at one hundred dollars a mile for Class A, and that about all the Miramichi lumbermen were in Class A, Mr. Berry went on to say that they wanted a campaign fund and thought the friends of the government should donate about fifteen dollars a mile. This conversation took place about the 25th day of June, 1912, and on the following day Mr. Sinclair paid the money, and he says he gave it voluntarily and freely."

"On the same day, Mr. Berry met Mr. James Robinson at the Miramichi Hotel in Newcastle, and after explaining about the classification of the lands and the amount of the bonus, asked for a campaign fund of fifteen dollars a mile, saying that if the others were paying, I will pay that on mine. At the same time Mr. Berry also asked for a like contribution from the lessees held by the Lynch Company, of which Mr. Robinson was president. As a matter of fact both

(Continued on page 3.)

THAT \$2,903

Brankley Says Premier Flemming Instructed Berry—But Where Did the Province Come in?

E. S. Carter, who a few days ago made a serious charge respecting the diversion of a \$2,903.82 stumpage payment by the Dalhousie Lumber Company, as part of a settlement of a disputed account arranged by W. H. Berry, superintendent of scalers, with them, tells The Telegraph that J. W. Brankley, manager of the Miramichi Lumber Co., of Chatham, was in the city on Thursday for the purpose of meeting W. H. Berry by appointment in order to discuss the matter.

Mr. Brankley made the somewhat serious statement to Mr. Carter that Berry was acting under instructions of Premier Flemming, then minister of lands and mines, and that the amount \$2,903.82 was paid over to him or to the Miramichi Lumber Co., he was not sure which, upon Flemming's instructions. The reason he gave for this diversion of such a large sum of money which should have been paid over to the crown land department and credited to the revenue of the province, was that two years before, when Mr. Rundle was manager of the Miramichi and Company, the crown land department made them pay \$5,000 in stampage for cutting under size, as was alleged by Berry, who was superintendent of scalers. Flemming, he said, when he became surveyor-general, promised to make the amount good and this is the way he obtained part of the rebate.

He would not say from what source he got the balance of the \$5,000, but insisted that the amount had been paid him.

Mr. Brankley seemed anxious to impress the fact that Berry did not profit by the transaction; but it may be said in this connection that his story does not agree with Mr. Berry's version, that the collection to the crown lands department but sent out from that office another statement to the Dalhousie people reducing their account so that it would appear in the books of Col. Loggie's office that they had only paid \$4,419.18 and \$1,419.18 in stampage on 4,000 sleepers, whereas on Aug. 30 they had paid an additional \$2,903.82 which did not go into the provincial revenue.

Mr. Carter says Mr. Brankley called the transaction "irregular," but was explicit in his statement that Premier Flemming knew all about it. Mr. Flemming, Mr. Brankley and Mr. Berry were three of the gentlemen who met in a certain room in the Barker Hotel in the first official to constitute the transaction "irregular," but was explicit in his statement that Premier Flemming knew all about it. Mr. Flemming, Mr. Brankley and Mr. Berry were three of the gentlemen who met in a certain room in the Barker Hotel in the first official to constitute the transaction "irregular," but was explicit in his statement that Premier Flemming knew all about it.

PLANS NOISELESS CARS FOR NIGHT TRAVELERS.

Railroad Superintendent Promises Sleepers in Which One Can Sleep.

A novel innovation and one likely to prove so popular that it will doubtless be adopted by other lines, is the first move of J. E. Tausig, now general superintendent of the Texas & Pacific railroad.

Mr. Tausig seeks to accomplish the "noiseless Pullman." As Mr. Tausig, who has been in New Orleans a few days, puts it, the Pullman is that section of the train where in the dark of night sleepers should reign supreme and all rebellious noises be kept at his estate be summarily suppressed. The order has gone out over all of the Texas & Pacific lines from New Orleans to El Paso, for the train crews on passenger trains to show the proper loyalty to sleep, so that Pullman travelers may derive the full benefits of the sandman's thrall.

It is an order unique in railroad annals, and Mr. Tausig has the distinction of being the first official to constitute himself "first aid to sleep" on a railroad journey.

"How will I accomplish the noiseless sleeper? Why, easily enough," the general superintendent maintained. "In the first place I have issued orders to the train crews to keep down what might be termed the 'big noises,' such as the clanging of bells and engines, discarding popping off of steam by sudden close to Pullmans in which passengers are asleep. 'How often is a passenger in one trying moment jerked bodily from downy slumber by the long hiss and splutter of some belated switch engine right at the window of his berth? If the passenger is nervous the concluding period of his sleep might take on the cruel nightmare phase, and in coming round he is just as likely as not fancy the roar of European war in his ears, or if his final nightmare had been overcharged a bit, see a thousand hissing serpents about his bed.'"

That's to be eliminated—the hissing and spluttering of engines near sleepers—and another phase of nocturnal disturbance which is to be relegated to the junk heap of useless things is the shouting of useless things in the yards that train crews seem to think a part of their business. No more shouting goes, the modulated voice will do just as well as the caw-cawing up front or retire to the roofs beneath the cars."

The third and most important bugaboo that Mr. Tausig has on his list is that certain depredations is needless talk by the train crews in the aisles of the Pullman during the night watches. If the porter save to enter the other with the latest scandal in Darktown or retail yarns heard in the smoking compartment they must seek the seclusion of the bar or the canteen up front or retire to the roofs beneath the cars."

"We are going to have a silent road," said Mr. Tausig, "and I know our passengers won't be sorry."

EXTORTION TIMBER GRAFT BY

contributions were paid optional and voluntary. HAD TO PAY.

"Mr. James A. Rundle—In Division B. This pay fifteen dollars a mile the government, and the would be collect \$15 a mile the money, amount June, 1912, and says he

"The evidence given against Mr. Berry eventually at the Barker rate per mile had been a good time to state fifteen dollars additional it over with his firm, the money was paid to but he says he had no classification of his land

"The sums paid by penny and other company with or through Mr. Berry reference to them."

"The contribution of paid until the fourth day ment had been progress Jones, manager of the c by Mr. E. R. Teed. M body else had paid it, as quest, the company would amount he would eliminate thing was being demanded the matter was with M made in connection with to a campaign fund, that tion, and that they felt rest. The money was IT WAS CLEAR EXT

"Having in view the conclusion that seems LY EXTORTED. U for any of the license the proposition was made raised. The fact is the Crown Land official to and was not a man Berry would prevail any of them and the official in the Crown Land each license holder should seem of less moment w the money. It was the gave weight, if not me so few out of all appo

"All the above in specially referred to ab classifying the lands a tification."

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